UNITED STATES PATENT AND TRADEMARK OFFICE

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ART UNIT	PAPER NUMBER
3688	

NOTIFICATION DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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	Application No.	Applicant(s)
Office Action Summary	10/672,537	KASIREDDY, VIJAY G.
	Examiner	Art Unit
	KHANH H. LE	3688

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 January 2010*.
2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-37* is/are pending in the application.
    4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) *1-37* is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a)☐ All   b)☐ Some * c)☐ None of:
        1.☐ Certified copies of the priority documents have been received.
        2.☐ Certified copies of the priority documents have been received in Application No. _____.
        3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5)☐ Notice of Informal Patent Application
6)☐ Other: _____.

DETAILED ACTION

1.   This Office Action is responsive to the correspondence filed 01/29/2010. Claims
1-37 are and remain pending, with claims 1 (system), 13 (method), 25 (CRM) and 37 (system) as
independent claims.

Claim Objections

2.   The amendment filed on 01/29/2010 has overcome the previous objection of
claim 37 in the last Office Action. Thus, the Examiner hereby withdraws such objection.

        (Interpretation of claim 37 (for prior art application): Claim 37 is interpreted as being
directed to the quote system).

Claim Rejections - 35 USC § 112-2nd paragraph

3.   The amendment filed on 01/29/2010 has overcome the previous rejections of
claims 1-12 under 35 U.S.C. 112, second paragraph, in the last Office Action. Thus, the
Examiner hereby withdraws such rejections.

Nomenclature and interpretation

4.   For brevity, the following nomenclature (matching the claims language) is used:
DE : "Downstream supply chain entity"
UE: "Upstream supply chain entity"
SCD = "a supply channel delay between the DE and an UE". Note: it is interpreted that by
definition the SCD is a time that must elapse before a product in inventory of the UE can be
made available to a consumer at the DE.

OLT: (customer) "order lead time". This is when a customer agrees to take delivery of a product
at a later time than a current time at a DE. Thus is interpreted that by definition the OLT

represents a time difference between a future date of delivery to customer and the current date.

Thus the OLT is by definition longer than SCD.

For example if the regular supply channel supply lead time between a UE and a DE, i.e. the SCD is 10 days, then for the customer agreeing to take delivery 5 days from today at a retailer (a DE), then the OLT ((customer) "order lead time"), with respect to the time the product is still at the UE, is 15 days.

Claim Rejections - 35 USC § 103

5.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6.   **Claims 1- 11, 13-23, 25-35, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franco US 7257552.**

Claims 1, 13, 25, 37 and 2, 14, 26:

Franco discloses consumer products distribution system, customer interface to place orders, customer specifying delivery schedule for "predictive purchasing ", collaboration system along supply chain to reduce costs to all involved including consumers (e.g. abstract, Fig 1, 28A and associated text; excerpts below). Consumers are given incentive discounts to promote the use of Predictive Purchasing, which significantly improves supply chain productivity (e.g. abstract, Fig 28A and associated text; excerpts below; especially col. 52 lines 26-67).

Franco further discloses at least the following system and software:

Description Paragraph - DETX (119):
Each Inventory Provider 130 can communicate with the following: (1) The VIMS 200 to fill consumer orders from its Inventory Site 112 or to obtain consumption statistics and forecasts, Virtual Inventory status, and real-time data on consumer orders. (2) The OIMS 111 of a Retailer 110 to negotiate product supplies, optimize product distribution, minimize total <u>inventory, and reduce distribution cost</u> *and time. (3) Each Inventory Site 112 to which it supplies products for the matters related to product deliveries. (4) The PTSS 300 for deliveries or pickups, and time updates for pending deliveries or pickups.*

Relevant excerpts follow:

Abstract :
A real-time transaction processing Consumer Products Distribution System (PDMS) reduces distribution costs, facilitates the distribution of products to consumers and makes online shopping practical. The PDMS integrates **Collaborative Inventory Sharing**, *Order Aggregation, Consumer* <u>*Predictive Purchasing,*</u> *Product Transport Support Service, Display Shops, Uniform Consumer Preference Codes, Integrated Virtual Technical Support Centers, and other convenient features.* **Consumers purchase products through web sites of local and remotely located retailers preferably using** <u>**Predictive Purchasing.**</u> *The items purchased from multiple retailers are aggregated at a consumer selected Order Aggregation Site (OAS) based upon a consumer specified schedule. The consumer can pick up the aggregated orders at the selected OAS or have the aggregated orders delivered to a residence. Commercial carriers process consumer parcels at OASs where they are combined with Aggregated Orders for pickup or delivery.* <u>***Consumers are given incentive discounts to promote the use of Predictive Purchasing, which significantly improves supply chain productivity.***</u>

(col.1 lines 13-20) :
This invention relates generally to a method and system for improving the efficiency and reducing the cost of distributing and selling products to consumers. **More particularly, the invention relates to Internet based methods and systems for Just-In-Time product distribution, inventory sharing**, *order aggregation,* **consumer** <u>**predictive purchasing,**</u> *and other conveniences and benefits that provide incentives for consumers to shop online.*

(col. 3 lines 6-24)
One aspect of the invention relates to Consumer Predictive Purchasing. In

*the current product distribution space, vast amounts of extremely valuable predictive consumption data stored in the minds of individual consumers are lost every day to the detriment of the supply chain and the economy. This aspect provides a system and method to collect and store, in real-time, predictive consumer consumption data. The use of this data in supply chain planning and forecasting can significantly contribute to major cost reductions in product manufacturing and distribution. In one embodiment of this invention, **consumers are offered incentive <u>discounts</u> to use the infrastructure provided by the PDMS for predicting their consumption needs at a future date and placing Predictive Purchase orders scheduled for future delivery to fulfill the predicted needs. The incentive <u>discounts</u> can be determined by appropriate algorithms designed to ensure extensive consumer participation. This aspect is discussed in Sections, II.A.7 and VIII of the Detailed Description of the Invention.***

(col.6 lines 1-10)
   *One specific object of this invention is to provide a system and method for coordinating the operation of the Collaborative Inventory Sharing aspect. This system and method gives each participating merchant the opportunity **to minimize <u>inventory and costs</u>** while offering a broader selection of products and better service to consumers. This system and method also **offers retailers the opportunity** to broaden their customer base, **negotiate better terms and prices for their product acquisitions, balance and reduce <u>inventories, and eliminate unnecessary product transportation costs</u>**.*

(col. 6 lines 20-23)
   *Another specific object of this invention is to provide a system and method **for coordinating Consumer Predictive Purchasing. This system relies upon incentive <u>discounts</u> to encourage consumers to use Predictive Purchase Orders.***

(col.7 lines 6-18)
   ***All participants in the distribution chain, such as manufacturers, wholesalers, distributors, retailers, and consumers can derive benefits from this invention. Manufacturers can obtain accurate real-time data upon which to base production plans. Using a Just-In-Time business model, wholesalers, distributors, and retailers can operate efficiently, with reduced <u>inventories, product costs,</u> shipping costs, and shipping times. <u>Retailers can ensure that no sales are lost due to lack of inventory</u>** and can better serve their customers with broader product selections. At the end of the distribution chain, consumers can shop comfortably from home, buy products at more competitive prices, receive their purchases more quickly, and have little or no need to drive for shopping.*

(col. 15 lines 32-51)
Consumer Predictive Purchasing
   The VIMS 200 preferably manages and coordinates the operation of specialized
application programs that support Consumer Predictive Purchasing. One of these
programs helps consumers predict and plan their household consumption. Another
computes incentive price <u>discounts</u>. ***Using the infrastructure provided by the***
PDMS 100, consumers can obtain significant price <u>discounts</u> on Predictive
Purchase orders scheduled for delivery at some future time determined by the
consumer's prediction. *The consumer ordering data can be collected and*
processed by the PDMS ***100 in real-time to*** *generate consumption reports that are*
available ***to the affected participants in the product distribution path,*** *from*
the manufacturers that produce the products to the retailers that receive the
purchase orders. ***This information gives the manufacturers the opportunity to***
generate accurate production forecasts and manufacturing schedules and provides
the necessary infrastructure for the entire product distribution chain to
approach a Just-In-Time operating model.

Description Paragraph - DETX (92): (col.16 lines34-56):
Architecture scalability:
   In a preferred embodiment of this invention, the architecture of the VIMS
200 is scalable through a component-based API which allows programmatic access
to low level data structures and functions. This feature allows flexible
customization of the VIMS 200 to meet specific business requirements through
the use of specialized application programs. Examples of such specialized
application programs are:
(1) A program that coordinates the use of an OAS 400
for shipping and receiving parcels as a convenience to consumers.
 (2) A program that optimizes the use of the trucks associated with the PTSS 300 by
optimizing schedules and itineraries subject to system constraints.
   (3) ***A program that computes minimum acceptable inventory levels for the most***
efficient operation of Inventory Sites.
 (4) ***A program that helps consumers predict and plan household consumption to enable them***
to take advantage of the incentive <u>discounts</u> associated with Consumer Predictive
Purchasing. *(5) A program that manages and coordinates the operation of Integrated Virtual*
Technical Support Centers.

(col. 52 lines 12-25)
   In one embodiment, the VIMS 200 provides web based programs that operate
with consumer specific historical consumption data stored in the Consumer DBM
239, to help consumers predict their future consumption needs. Using such
programs, the Consumer 120 can obtain reasonable estimates of future household

consumption and then use these estimates to place Predictive Purchase orders to fulfill consumption needs at some future time. **To promote the use of Predictive Purchase orders, Retailers 110 can offer special incentive <u>discounts</u> to consumers that place Predictive Purchase orders scheduled for delivery at some future time to fulfill the predicted needs. These special incentive <u>discounts</u> provide a powerful vehicle for collecting predictive consumption data from consumers.**

(col. 52 lines 26-39)
  To support Predictive Purchasing, the VIMS can provide specialized application programs that **estimate supply chain cost savings resulting from Predictive Purchasing and correlate such savings with the Predictive Purchase Delay (PPD).** *As used herein,* **Predictive Purchase Delay (PPD) is the time span between the time the consumer places a Predictive Purchase order and the time the consumer agrees to take possession of the goods purchased.** *The specialized application programs also correlate the PPD to the incentive price* **<u>discounts</u>** *offered to consumers to* **enable retailers to tailor incentive <u>discounts</u> to the markets they serve and the business models they use. In general, the longer the PPD is, the larger the achievable supply chain cost savings and the incentive price <u>discounts</u> are.**

(col. 52 lines 40-67)
  The use of Predictive Purchasing can bring major economic benefits to the entire supply chain, some of which can be passed to consumers in terms of incentive price **<u>discounts</u>**. *For purposes of illustration, assume that based upon historical consumption records maintained by the VIMS 200 on the behalf of a specific consumer,* **Predictive Purchase orders for milk can be placed by that consumer with a PPD of 10 days. When the consumer places a Predictive Purchase order, preferably the ordering information becomes available in real-time to all the participants in the supply chain, from the dairy that processes the milk to the retailer that receives the order.** *Once a significant percentage of consumers adopt Predictive Purchasing, the dairy can accurately plan and schedule production and significantly improve productivity.* **Likewise, the distribution system can operate efficiently with Just-In-Time scheduling.** *Milk containers can be shipped from the dairy to regional distribution centers and within a few hours be transported by the PTSS 300 to each designated OAS 400 Just-In-Time to meet Order Aggregation schedules.* **Accordingly, the dairy-to-consumer distribution time and the total inventory of milk in the distribution pipeline can both be reduced to a minimum. In addition, the costs otherwise experienced by Retailers 110 for keeping milk in inventory in expensive shelf space, and other costs associated with handling, spoilage, and overhead can be eliminated.** *In general, similar productivity improvements for*

both perishable and non-perishable products can be achieved at most stages of the supply chain.

(col. 52 lines 26-39)
*To support Predictive Purchasing, the VIMS can provide specialized application programs that **estimate supply chain cost savings resulting from Predictive Purchasing and correlate such savings with the Predictive Purchase Delay (PPD)**. As used herein, **Predictive Purchase Delay (PPD) is the time span between the time the consumer places a Predictive Purchase order and the time the consumer agrees to take possession of the goods purchased.** The specialized application programs also correlate the PPD to the incentive price **discounts** offered to consumers to **enable retailers to tailor incentive discounts to the markets they serve and the business models they use. In general, the longer the PPD is, the larger the achievable supply chain cost savings and the incentive price discounts are.***

(col. 53 lines 1-4)
*FIG. 28A illustrates a method 2800 by which specialized application programs can estimate supply chain cost savings, correlate them with the PPD, and **derive appropriate incentive price discounts for Predictive Purchases**.*

(col. 53 lines 16-26)
***At step 2803, the correlation between PPD and incentive price discounts offered to consumers is identified.** This correlation can be established empirically by a set of statistical experiments using a range of PPD values and a range of incentive price **discounts**. **A separate experiment is conducted for each PPD value whereby each experiment involves offering various incentive price discounts and recording the number of Predictive Purchase Orders placed by consumers that take advantage of each price discount.** From this data the correlation between PPD and incentive price **discounts** can be statistically evaluated.*

(col. 53 lines 27-37)
*At step 2804, the correlations identified in steps 2802 and 2803 are analyzed to establish the incentive price **discounts** that generate the desired cost reductions. Various types of criteria can be used to perform this analysis. For example, a criterion can be maximizing profitability after accounting for price **discounts**. **At step 2805, the incentive price discounts associated with the respective PPDs are applied.** At step 2806, data representing online orders for the product is collected and stored over time. **This data extends to the full range of PPD values and their respective incentive price discounts and includes the case where the PPD is zero.***

(col. 53 lines 38-48)

> *At step 2807, the data collected over time is periodically analyzed to establish revised incentive price **discounts**. **At step 2808, the revised incentive price discounts associated with the respective PPD values are applied to the product**. After step 2808, the process loops back to step 2807 and remains in an infinite loop, which over time periodically revises the incentive price **discounts** to obtain optimum performance in accordance to a specified criterion. For example, the long-term average price paid by consumers for the specific product is maintained at a minimum to control inflation.*

Thus Franco discloses, at the citations and excerpts above, all of claims 1, 13, 25, 37 and 2, 14, 26:

A computer-implemented system for distributing consumer demand upstream in a supply chain, comprising:

one or more computer systems (see Fig 1, computer systems are e.g. item 111:"OIMS" or item 200:"VIMS") comprising:

a) a user interface (e.g. Fig 1 item 120: consumer shopping online; Fig 20 item 120, consumer browser) configured operable to:

a1) receive a consumer demand for a product to be received at a FUTURE DATE (see e.g. col. 52 lines 26-39 and excerpts above);

b) a quote system (e.g. Fig 1 item 113: storefront; or Fig 20 item 113: web storefront; e.g. Fig 28A, item 2803: "price offered" reads on quote and consumer acceptance or rejection) coupled configured to:

b1) receive, from the user interface, the consumer demand for the product;

b2) determine an incentive based on an OLT for the product, the OLT for the product representing a time difference between the FUTURE DATE and the current date, the OLT being longer than a supply channel delay between a DE and an UE, **the incentive reflecting**

cost savings to the DE associated with the OLT (see e.g. col. 52 lines 26-39 and excerpts above; see FIG. 28A which illustrates a preferred method by the PDMS to correlate price <u>discount</u> to Predictive Purchase Delay (PDD); the PDD reads on the claimed OLT); and

b2) communicate the incentive (a price discount on the product) to the user interface (see e.g. col. 52 lines 12-25, and 26-39 and excerpts above),

wherein the user interface is <u>further configured</u> operable to:

a2) receive the incentive from the quote system (see above); and

a3) communicate the incentive to <u>a</u> consumer (see col. 52 lines 12-25 and

excerpts above);

and

c) a consumer order management system (COMS) (e.g. Figure 1, item 111:"OIMS" or item 200:"VIMS" which includes "order generation module, order processing module, see col. 8 lines 5-9) <u>configured</u> to:

c1) communicate an order for the product to the UE (e.g. see Figs 6A-7B: order generation module) (to allow the consumer to receive the product at the FUTURE DATE from current inventory of the UE rather than from current inventory of the DE in exchange for the incentive) (see excerpts above: Just in time delivery model disclosed at excerpts above reads on receipt from current inventory of the UE since in Franco all lead delivery times as minimized).

(NOTE: though disclosed by Franco, the "to allow.." and "the cost savings...comprising...." limitations, (if any not deleted) are also interpreted as statements of purpose or effect (or natural consequence of the previous steps) only, thus do not need to be given patentable weight. This applies to all claims below having similar limitations).

Response to Arguments

Pointing to Franco, *col. 52 lines 26-39, (excerpted above),* Applicant argues, (Resp. at 22-24), that Franco only discloses that the length of the "Predictive Purchase Delay" (which is

equivalent to the claimed order lead time) is directly proportional to the amount of achievable

supply chain cost savings and incentive price discounts, which is a passive correlation, unlike

determining an incentive based on an order lead time for the product, which is required by claim

1 language.

The examiner notes that Franco discloses more than mere data correlation.

Franco, at (col. 52 lines 26-67) discloses:

> *To support Predictive Purchasing, the VIMS can provide specialized*
> *application programs that estimate supply chain cost savings resulting from*
> *Predictive Purchasing and* <u>*correlate such savings with the Predictive Purchase*</u>
> <u>*Delay (PPD). As used herein, Predictive Purchase Delay (PPD) is the time span*</u>
> <u>*between the time the consumer places a Predictive Purchase order and the time*</u>
> <u>*the consumer agrees to take possession of the goods purchased.*</u> *The specialized*
> *application programs also correlate the PPD to the incentive price discounts*
> *offered to consumers* ***to enable retailers to tailor incentive discounts to the***
> ***markets they serve and the business models they use.*** <u>*In general, the longer*</u>
> <u>*the PPD is, the larger the achievable supply chain cost savings and the*</u>
> <u>*incentive price discounts are.*</u>

Contrary to argument, the paragraph above suggests first, that incentives are offered:

"incentive price discounts offered to consumers". See also abstract.

Second, .."[*T]he specialized application programs also correlate the PPD to the incentive*

price discounts offered… ***to*** <u>***enable retailers to tailor incentive discounts***</u> *to the markets they*

serve and the business models they use." means that incentive discounts are <u>actively</u>

determined, and the correlation between PPD and (i.e. past) discounts offered is used in an

iterative or optimizing mode to "tailor" (i.e. adjust, determine, or redetermine) what the

discounts will be.

Third,"*the longer the PPD is, the larger the achievable supply chain cost savings and the*

incentive price discounts are", clearly suggests that the incentive discount is based on the PPD.

See also Fig 28 A and (col. 53 lines 1-4):

*FIG. 28A illustrates a method 2800 by which specialized application programs can estimate supply chain cost savings, correlate them with the PPD, and **derive appropriate incentive price <u>discounts</u> for Predictive Purchases**.*

This bolded language would clearly suggest to a skilled artisan that the discounts are based on the cost savings that are a function of the PPD.

(col. 52 lines 12-25)

*"…. **To promote the use of Predictive Purchase orders, Retailers 110 can offer special incentive <u>discounts</u> to consumers that place Predictive Purchase orders scheduled for delivery at some future time to fulfill the predicted needs. …"***

Again the bolded language would clearly suggests to a skilled artisan that the discounts are based on the delayed delivery, i.e. the PPD.

See also (col. 53 lines 16-26): for a given PPD, several experimental discounts are calculated, offered, monitored, then revised, reapplied:

> **At step 2803, the correlation between PPD and incentive price <u>discounts</u> offered to consumers is identified**. *This correlation can be established empirically by a set of statistical experiments using a range of PPD values and a range of incentive price <u>discounts</u>.* **A separate experiment is conducted for each PPD value whereby each experiment involves offering various incentive price <u>discounts</u> and recording the number of Predictive Purchase Orders placed by consumers that take advantage of each price <u>discount.</u>** *From this data the correlation between PPD and incentive price <u>discounts</u> can be statistically evaluated.*

See also (col. 53 lines 27-37) excerpted above:

> *…. **At step 2805, the incentive price <u>discounts</u>***

associated with the respective PPDs are applied. *At step 2806, data representing online orders for the product is collected and stored over time.* **This data extends to the full range of PPD values and their respective incentive price <u>discounts</u> and includes the case where the PPD is zero.**

See also *(col. 53 lines 38-48)* excerpted above:

"At step 2807, the data collected over time is periodically analyzed to establish revised incentive price <u>discounts</u>. **At step 2808, the revised incentive price <u>discounts</u> associated with the respective PPD values are applied to the product.** *After step 2808, the process loops back to step 2807 and remains in an infinite loop, which over time periodically revises the incentive price <u>discounts</u> to obtain optimum performance in accordance to a specified criterion. ..."*

Thus it is clear from the excerpts above that the incentive applied is positively determined as a function of the PPD.

Further, it is noted that the claim is to *"determine an incentive based on an order lead time for the product,* **<u>wherein</u>** *the order lead time for the product represents a time difference between the future date and the current date, the order lead time being longer than a supply channel delay between a downstream supply chain entity and an upstream supply chain entity,* **the incentive reflecting cost savings to the downstream supply chain entity associated with the order lead time."**

Thus the positive step is "to determine an incentive based on an order lead time for the product" . *"Wherein .. the incentive reflecting cost savings to the downstream supply chain entity associated with the order lead time."* is just a statement of effect, to which little patentable weight should be given.

Further even if it is given full patentable weight, Franco discloses " *In general, the longer the PPD is, the larger the achievable supply chain cost savings and the incentive price discounts are." (col. 52 lines 26-39)* thus establishing a direct relationship between the 3 quantities.

Franco also discloses a supply chain cost savings (which includes savings for *"another component associated with the distribution process"* which is interpreted as a downstream supply chain entity") is also function of the PPD.

see e.g. (col. 53 lines 5-15).

*"At step 2801, a product is identified. At step 2802, the correlation between PPD and achievable supply chain cost savings is identified. **The supply chain cost savings may include a component associated with the manufacturing process and another component associated with the distribution process. For each increment of the PPD the corresponding supply chain cost savings can be estimated** through computer modeling programs and the respective results recorded. Using these results, the correlation in step 2802 can be expressed, for example, **as a plot of supply chain cost savings versus PPD.**"*

Since the discount is a function of the PPD and the cost savings to a downstream supplier is also a function of the PPD, it is clear that the incentive is also a function of the cost savings to a downstream supplier, i.e. "the *incentive "reflects" cost savings to the downstream supply chain entity associated with the order lead time."*as claimed.

Appellant had argued that Franco at col. 52 lines 26-39 does not disclose determining an incentive based on an OLT wherein the OLT is longer than a supply channel delay between a DE and an UE.That is, Franco's PPD is not an OLT that is longer than a supply channel delay between a DE and an UE.

However see explanation and definition in the nomenclature part above. The OLT is by definition longer than SCD which by definition is a supply channel delay between a DE and an UE.

Thus Franco's PPD is an OLT that is longer than a supply channel delay between a DE and an UE and an incentive is based thereon.

Also Franco as discussed above teaches determining an incentive based on an OLT, thus whatever the value of the OLT is, the Franco's system would be capable of determining the incentive based thereon.

Franco, at (col. 52 lines 26-67) discloses:

To support Predictive Purchasing, the VIMS can provide specialized application programs that estimate supply chain cost savings resulting from Predictive Purchasing and <u>correlate such savings with the Predictive Purchase Delay (PPD). As used herein, Predictive Purchase Delay (PPD) is the time span between the time the consumer places a Predictive Purchase order and the time the consumer agrees to take possession of the goods purchased.</u> The specialized application programs also correlate the PPD to the incentive price discounts offered to consumers **to enable retailers to tailor incentive discounts to the markets they serve and the business models they use.** <u>In general, the longer the PPD is, the larger the achievable supply chain cost savings and the incentive price discounts are.</u>

Thus if economic considerations make it desirable for merchants to promote discounts based on an OLT being longer than a supply channel delay between a certain DE and a certain UE, **it would have been obvious** to one having ordinary skill in the art at the time of the invention (herein a "PHOSITA") to do so, " **to** enable retailers to tailor incentive discounts to the markets they serve and the business models they use" as taught by Franco.)

Claims 3, 15, 27:

FRANCO modified as above discussed discloses the system, method and software of claims 1, 13, 25 and further discloses wherein the quote system is a first quote system and operable to: collaborate with a second quote system associated with the UE to determine a cost at the UE associated with the consumer receiving the product from the current inventory of the UE (e.g. at *col.6 lines 1-10: "each participating merchant the opportunity to minimize inventory*

and costs while offering a broader selection of products and better service to consumers. This

system and method also offers retailers the opportunity to .. negotiate better terms and prices for

their product acquisitions, balance and reduce inventories, and eliminate unnecessary product

transportation costs." suggests multi-parties quotes and negotiation systems to reduce costs for

the benefit of customers.

Further Franco (at e.g. col. 52 lines 26-67) discloses savings are obtained at each step

along the supply chain and are passed onto consumers as discounts thus reads on:

"determine a profit increase on the product at the DE based on:

the cost at the UE associated with supplying the product from the current inventory of the UE;

and the cost savings to the DE associated with the OLT ;

and determine the incentive based on the **profit increase".**

Claims 4, 16, 28:

FRANCO modified as above discussed discloses the system, method and software of

claims 1, 13, 25 and further discloses

wherein the quote system is a first quote system and operable to collaborate with a second quote

system associated with the UE to determine the incentive based on one or more business rules

associated with one or more of the DE's and UE's (implied in citations or excerpts above).

Claims 5, 17, 29:

Claims 5 amounts to giving a larger incentive for a longer delivery delay time based on

better achieved savings. Franco, reads on such at *(col. 52 lines 26-67).*

> *To support Predictive Purchasing, the VIMS can provide specialized*
> *application programs that estimate supply chain cost savings resulting from*
> *Predictive Purchasing and* <u>*correlate such savings with the Predictive Purchase*</u>
> <u>*Delay (PPD). As used herein, Predictive Purchase Delay (PPD) is the time span*</u>
> <u>*between the time the consumer places a Predictive Purchase order and the time*</u>
> <u>*the consumer agrees to take possession of the goods purchased.*</u> *The specialized*
> *application programs also correlate the PPD to the incentive price discounts*
> *offered to consumers to enable retailers to tailor incentive discounts to the*
> *markets they serve and the business models they use.* <u>*In general, the longer*</u>
> <u>*the PPD is, the larger the achievable supply chain cost savings and the*</u>

incentive price discounts are.

Thus FRANCO discloses the system, method and software of claims 1, 13, 25 and further discloses:

wherein: the FUTURE DATE is a first FUTURE DATE, the incentive is a first incentive, the UE is a first UE, and the OLT is a first OLT;

the quote system is further operable to:

determine a second incentive based on a second OLT for the product,

(the second OLT for the product representing a time difference between a second FUTURE DATE and the current date, the second OLT being longer than a second supply channel delay between the DE and a second UE) ,

(the second incentive reflecting collective cost savings to the DE and the first UE associated with the second OLT);

and communicate the second incentive to the interface;

the interface is further operable to: receive the second PI from the quote system;

and convey the second PI to allow the consumer to choose whether to receive the product at the second FUTURE DATE rather than the current date in exchange for the second PI;

and the COMS is further operable to,

if the consumer chooses to receive the product at the second FUTURE DATE rather than the current date in exchange for the second PI ,

communicate an order for the product to the second UE

(to allow the consumer to receive the product at the second FUTURE DATE from current inventory of the second UE rather than from current inventory of the DE in exchange for the second PI),

(the collective cost savings to the DE and the first UE associated with the second OLT and reflected in the second PI comprising collective cost savings associated with the consumer receiving the product at the second FUTURE DATE from current inventory of the second UE rather than from current inventory of the DE or the first UE),

the second PI being larger than the first PI.

Claims 6, 18, 30:

FRANCO modified as above discussed discloses the system, method and software of claims 5, 17, 28 and further implicitly discloses:

wherein the interface is operable to convey the first and second incentives to allow the consumer to choose whether to receive the product at the first FUTURE DATE or the second FUTURE DATE (rather than the current date) in exchange for the first incentive or the second incentive (at e.g. col. 52 lines 26-67: *" the longer the PPD is, the larger the achievable supply chain cost savings and the incentive price discounts are. "* implies giving choices of a several FUTURE DATE 's for different incentives*).*

Claims 7, 19, 31:

Claims 7, 19, 31 parallel claims 3, 15, 27 as to the second UE.

As discussed above, Franco at col. 52 lines 26-67: " the longer the PPD is, the larger the achievable supply chain cost savings and the *incentive price discounts are and other citations about sharing savings realized through the supply chain,* reads on claims 7, 19, 31:

Thus FRANCO modified as above discussed discloses the system, method and software of claims 5, 17, 28 and further discloses:

wherein the quote system is a first quote system and operable to: collaborate with a second quote system associated with the second UE to

determine a cost at the second UE associated with the consumer receiving the product from the current inventory of the second UE;

determine a profit increase on the product at the DE based on:

the cost at the second UE associated with supplying the product from the current inventory of the second UE ;

and the cost savings to the DE associated with the second OLT ;

and determine the second INCENTIVE   based on the profit increase.

Claims 8, 20, 32:

Claims 8, 20, 32 parallels claims 4, 16, 28 as to the second UE.

As discussed above Franco at col. 52 lines 26-67: " the longer the PPD is, the larger the achievable supply chain cost savings and the incentive price discounts are" and other citations about sharing savings realized through the supply chain, reads on claims 8, 20, 32.

Thus FRANCO modified as above discussed discloses the system, method and software of claims 5, 17, 28 and further discloses:

wherein the quote system is a first quote system and operable to collaborate with one or both of a second quote system associated with the first UE and with a third quote system associated with the second UE to determine the second INCENTIVE based on one or more business rules associated with one or more of the downstream and first and second upstream supply chain entities.

Claims 9, 21, 33:

As with claims 5, 17, 28 above, Franco, in the citations above, reads on repeating the same method of claim 1 further up the chain supply chain, involving more UE's and reflecting more savings with more UE's to be passed on to customers, which reads on claims **9, 21, 33**.

Thus FRANCO discloses the system, method and software of claims 5, 17, 28 and further discloses

wherein: the quote system is further operable to:

determine a third incentive based on a third OLT for the product,

(the third OLT for the product representing a time difference between a third FUTURE DATE and the current date, the third OLT being longer than a third supply channel delay between the DE and a third UE),

the third incentive reflecting collective cost savings to the DE and the second UE associated with the third OLT;

and communicate the third incentive to the interface; the interface is further operable to: receive the third incentive from the quote system; and convey the third incentive to allow the consumer to choose whether to receive the product at the third FUTURE DATE rather than the current date in exchange for the third incentive ;

and the COMS is further operable to, if the consumer chooses to receive the product at the third FUTURE DATE rather than the current date in exchange for the third incentive, communicate an order for the product to the third UE

(to allow the consumer to receive the product at the third FUTURE DATE from current inventory of the third UE rather than from current inventory of the DE in exchange for the third incentive) ,

the collective cost savings to the DE and the second UE associated with the third OLT and reflected in the third incentive comprising collective cost savings associated with the consumer receiving the product at the third FUTURE DATE from current inventory of the third UE rather than from current inventory of the downstream supply chain entity, the first UE , or the second UE ,

the third incentive being larger than the first incentive and the second incentive.

Claims 10, 22, 34:

FRANCO modified as above discussed discloses the system, method and software of claims 1, 13, 25 and further discloses wherein the consumer choosing to receive the product at the future date rather than the current date in exchange for the incentive comprises one of: the consumer purchasing the product at the current date; the consumer committing at the current date to purchase the product at the FUTURE DATE ; and the consumer indicating an intention at the current date to purchase the product at the FUTURE DATE (citations above).

Claims 11, 23, 35:

FRANCO modified as above discussed discloses the system, method and software of claims 1, 13, 25 and further discloses:

wherein the consumer receiving the product at the FUTURE DATE comprises one of: the consumer visiting the DE at the FUTURE DATE to pick up the product; the DE delivering the product to the consumer at the FUTURE DATE and the UE delivering the product to the consumer at the FUTURE DATE (e.g. abstract).

7. **Claims 12, 24, 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franco as applied to claims 1, 13, 25 above, and further in view of Official Notice (with the definition of liquidated damages (clause) by *Investopedia.com*. Investopedia Inc. 07 Oct. 2008.<Dictionary.com, http://dictionary.reference.com/browse/liquidated damages or Walker US 5794207 A as support thereof).**

Claims 12, 24, 36:

FRANCO discloses the system, method and software of claims 1, 13, 25 and discloses extensively about product returns and authorization of such but does not disclose explicitly wherein, if the consumer chooses to receive the product at the FUTURE DATE rather than the current date in exchange for the incentive , the consumer makes an initial payment to the retailer at the current date based on one or more costs to the DE associated with cancellation of the order.

However, Official Notice is taken that it is well known for vendors to charge fees or penalties or liquidated damages for cancellation of order to protect vendors from breach of contract by buyers. Usually a deposit or initial payment would be such liquidated damages. An example is loss of deposit in cancellation of buying a house or cancellation of a custom product e.g. a car. Thus it would have been obvious to a PHOSITA to add such customary practice to the system of Franco to protect vendors.

The references given earlier and below in support for the Official Notice, and the responses to arguments below are hereby made an integral part of this rejection.

Response to (Prior Art) Arguments

8.   Applicant's arguments filed 01/29/2010 have been fully considered but they are
not persuasive. **The new arguments are discussed above in the prior art discussion.**

**The following is a repeat of responses to old arguments again repeated in
Applicant's instant response from pages 24-28 (see Office Action dated 10/29/09, pages 16-
18) .**

"Applicants also contest the Official Notice:
*"Thus, if the Examiner continues to maintain the rejection of Claims 12, 24, and 36 based on the
Official Notice, Applicant respectfully requests that the Examiner provide documentary evidence
as necessitated by MPEP § 2144.03(C)." (Response,p. 27).*

It is noted that documentary evidence had been provided (Final Office Action mailed 30
April 2009, pages 4, 21-22).

The Examiner provided in the last Office Action, as support for the Official Notice, the
definition of liquidated damages (clause) by *Investopedia.com*. Investopedia Inc. 07 Oct.
2008.<Dictionary.com http://dictionary.reference.com/browse/liquidated damages>. i.e. a
provision present in certain legal contracts, that allows for the payment of a specified sum should
one of the parties be in breach of contract.

As to application of this clause in real estate or sales of goods or services, Walker US
5794207 A, is another support for the Official Notice: Walker relates to contracts for sale of
goods or services (including car sales and real estate, see col. 2 lines 34-38) in which liquidated
damages can be made part of the contracts (col. 30 lines 47-52).

As noted earlier the traversal of the Official Notice also is not adequate. To adequately
traverse an Official Notice finding, an applicant must specifically point out the supposed errors
in the examiner's action, which would include stating why the noticed fact is not considered to be
common knowledge or well-known in the art. See MPEP 2144.03(C). Here, the Official Notice
taken was that it is well known for vendors to charge fees or penalties or liquidated damages for
cancellation of order to protect vendors from breach of contract by buyers. Usually a deposit or

initial payment would be such liquidated damages. An example is loss of deposit in cancellation of buying a house or cancellation of a custom product e.g. a car.

Applicants argue such Official Notice is not capable of instant and unquestionable demonstration as being well-known. However, Applicants did not specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact or facts are not considered to be common knowledge or well-known in the art. That is Applicants did not point out whether it is the legal concept of liquidated damages in contracts that Applicants argue is not well-known, or the application to sales contracts involving vendors and buyers, or the example given by the Examiner. As such the challenge to the Official Notice is not adequate and the common knowledge or well-known in the art statement is taken to be admitted prior art. See MPEP 2144.03 (C). Because the challenge is inadequate, the Examiner also does not have to support the finding with adequate evidence.

Applicant further argues the prior Office Action fails to provide any articulation (emphasis added) , let alone, clear articulation of the reasons why Applicant's claimed invention would have been obvious.

The examiner notes that the evidence for a prima facie case is Franco as shown above, and the Official Notice with support provided (Final Office Action mailed 30 April 2009, pages 4, 21-22) . The motivation to combine has been given. It is to protect vendors. Though succinct, the motivation is absolutely clear. Liquidated damages (with support provided) by definition, are provisions present in certain legal contracts, that allow for the payment of a specified sum should one of the parties be in breach of contract. Walker US 5794207 A, is another support for the Official Notice: Walker relates to contracts for sale of goods or services (including car sales and real estate, see col. 2 lines 34-38) in which liquidated damages can be made part of the contracts (col. 30 lines 47-52). To add such liquidated damages to the system of Franco only serves to protect the vendors in the Franco system, an unremarkable and thus obvious result. It is obvious vendors want protection from breach of contracts by buyers as asserted earlier. As noted in KSR, the PHOSITA is not an automaton, thus would have been capable of appreciating the benefit of using liquidated damages in Franco's system.

     The Applicant did not show how that is not articulation or why this articulation is unclear. " As noted earlier, as to the argued level of skill in the art, it can be found in the references, i.e. Franco and the Official Notice. The motivation statement can be seen as satisfying the teaching, suggestion, or motivation (TSM) test or rationale G in the KSR Guidelines cited by Applicants. Other rationales may apply however the Examiner asserts that the motivation as previously and currently stated is adequate for a prima facie case of obviousness. "

Conclusion

     10.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

     A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

     11.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khanh H. Le whose telephone number is 571-272-6721. The Examiner works a part-time schedule and can normally be reached on Monday-Wednesday 9:00-6:00. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, **LYNDA JASMIN** can be reached at **(571)272-6782.** The fax phone numbers for the organization where this application or proceeding is assigned are 571-273-8300 for regular communications and for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-3600. For patent related correspondence, hand carry deliveries

must be made to the Customer Service Window (now located at the Randolph Building, 401 Dulany Street, Alexandria, VA 22314). Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Khanh H. Le/
Primary Examiner, Art Unit 3688